Court, U. S.
FILED
JUN 21 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1975

75-
No. 1689

MAYFAIR CONSTRUCTION CORP.,
Petitioner.

-against

FREDDIE BODRICK, ALLEN CORBETT, WILEY C. DUNBAR, JOSEPH T. DOBIE, MARION JAMES HOLLINS, HUBERT LAWTON, LARRY LYTTLE, MELVIN PLUMMA, WILLIE REYNOLDS, WILLIAM BAKER, FRANK BRISBANE, JAMES BRISBANE, SR., JAMES A. BRISBANE, JR., MARION CALDWELL, RODELL GRAHAM, JOSEPH N. GRAHAM, MANFORD GREGORY, JAMES HARRIS, MATTHEW HAZELTON, HEROD JONES, ROBERT E. LEROY, CHARLES LUTTREL, JR., WILLIE A. MARCHELL, SAMUEL MARSHALL, PAUL MILLER, CHARLES PEAY, LEO ROBINSON, NEAL WILLIAMS, and other employees of petitioner similarly situated,
Respondents.

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Respondents.

RESPONDENTS' BRIEF

For reasons quite variant from Petitioner's (hereinafter "Mayfair"), Respondents join with Mayfair in its prayer

that a writ of certiorari issue to review the final order herein of the Court of Appeals of the State of New York entered on February 26th, 1976. We accept Mayfair's references to the opinions, orders and reports of the case below, the jurisdictional statement, and the citation of the statutes involved.

QUESTIONS PRESENTED

1. Whether the National Housing Act's prevailing wage section 212(a), as amended; 53 Stat. 807, sec. 212(a), as amended; 12 U.S.C. §1715c, enacted June 3, 1939 prior to the adoption of Reorganization Plan No. 14 of 1950 (May 24, 1950, 15 F.R. 3175; 64 Stat. 1267) and the promulgation of Regulations thereunder by the Secretary of Labor covering, *inter alia,* the administration of that prevailing wage section, although silent from inception to the present day as to enforcement, whether judicially or administratively, implies the grant of a remedy of private judicial suit for recovery of the prevailing wage by the covered mechanics and laborers?

In 1949 this Court reversed *Filardo v. Foley Bros.*, 297 N.Y. 217 (1948) for its attempt to give extraterritorial application to the Eight Hour Law amendment of September 9, 1940, c. 717, Title III, §303; 54 Stat. 884; 40 U.S.C. §325a, strikingly analogous in substantively providing for overtime premium pay while omitting any express reference to an enforcement remedy, 336 U.S. 281, 290, 291:

> "Since we decide that the Eight Hour Law is inapplicable to a contract for the construction of public works in a foreign country over which the United States has no direct legislative control, it is unnecessary to decide whether the law either

> directly or via the third party beneficiary contract route, gives an employee who is covered by it a cause of action against his employer for overtime wages."

As far as we know the instant case represents the very first adjudication of judicial enforcement of the prevailing wage section of the National Housing Act in the thirty-seven years of its existence, nor has this Court had occasion to rule upon what it left open in *Filardo.* The case therefore comes squarely within Rule 19(1)(a) of the Rules of this Court as an instance, "Where a state court has decided a federal question of substance not theretofore determined by this court, * * *";

2. Whether the Court of Appeals of the State of New York properly decided that a form transmittal letter of the Federal Housing Administration (hereinafter "FHA") stating, *inter alia,* that "This Administration has been in charge of the examination of payroll records for this project and has determined that the check in the amount stated is proper compensation for your work.", was the application of a non-exclusive administrative remedy not barring the pursuit of the judicial statutory remedy?

The larger question embodied in that ruling is whether a state trial court, in the exercise of federal question jurisdiction not exclusively mandated to the federal courts, can take the same action with respect to the acts of a federal administrative agency that a federal district court is empowered to do.

STATUTES INVOLVED

In addition to the text of section 212(a), the prevailing wage section of the National Housing Act (53 Stat. 807, Sec. 212(a), as amended; 12 U.S.C. §1715c(a)) as it stood

in the period August 1962 through May 1964 (Pet. 4,5),[1] and of the Regulations of the Secretary of Labor, 29 CFR, Part 5 (Pet. 21a-28a), we append the texts of the Contract Work Hours Standards Act of August 13, 1962, 76 Stat. 357-360; 40 U.S.C. §§327-332; and also that section of the Eight Hour Law dealt with by *Filardo v. Foley Bros.*, 297 N.Y. 217 (1948), *reversed, Foley Bros. v. Filardo*, 336 U.S. 281 (1949), *viz.*, the September 9, 1940 amendment, c. 717, Title III, §303; 54 Stat. 884; 40 U.S.C. §325a.

STATEMENT OF THE CASE

Our view of the facts of this case, which will be seen to be borne out by the record should this Court grant review, is at considerable variance from Mayfair's. In the employer's high rise apartment building construction project financed by FHA guaranteed loans, the Secretary of Labor had, "prior to the beginning of construction", made the various prevailing wage determinations for the project with the lowest scheduled wage, for the classification of "laborer", fixed at $3.95 per hour and with overtime premium at time and one-half for hours worked in excess of eight in a day or forty in a week. Respondents, all black, euphemistically described as "non-union laborers and mechanics" in the dissent of Jasen, J. (Pet. 14a), were hired at the flat rate of $2.00 per hour excepting for three or four leadmen who received $2.50 to $2.75 per hour — and none of respondents ever got a penny of premium pay for overtime even though leadman Peay averaged over 60 hours per week over a nearly two year period.

The period of respondents' employment with Mayfair was between mid-August 1962 and May 6, 1964. Earlier in the latter year employee spokesmen complained to

1. References are to pages of the Petition for Certiorari herein.

Government inspectors about being underpaid. The upshot was that Mayfair drew a series of checks for all of the respondents, all dated May 5, 1964, which were transmitted to the respondents under the FHA's form covering letter set forth in page 7 of the petition. Late in April 1964 respondents' counsel, Mr. Panzer, had written to the FHA of his intention to start suit for additional moneys and requesting the FHA's care that the checks not bear words of release by endorsement. Contrary to page 7 of the petition, none of the May 1964 checks bore words of release by endorsement, and suit was started within a few days thereafter. May 6, 1964 was the last day that any respondent worked for Mayfair.

It was not until September 1964, months after the commencement of suit, that nine additional checks of Mayfair, each dated August 24, 1964 and this time bearing the language of release by endorsement, were sent out to nine of the respondents with the same FHA form letter.

Several years later, when counsel was first allowed access to Mayfair's payroll records, the ledgers all showed erasures of the original classification of "laborer" and an overtyping of the words "porter - cleaner". That magical qualities were attributed to the latter words by Mayfair's president Litwin is apparent, "* * * further * * * plaintiffs were not employed as laborers but as porters and cleaners and thus defendant did not violate the National Housing Act * * *."

A computation prepared by respondents' counsel from Mayfair's ledger sheets, checked and corrected by Mayfair's bookkeeping personnel, shows an aggregate underpayment from the prevailing wage established for "laborer" of $62,480.63—this with full credit for all payments, inclusive of the additional payments covered by

the FHA form transmittal letters. Hence, factually, the demonstration is exact as to the degree of violation of the minimum prevailing wage determination — the true administrative determination — of $3.95 per hour for "laborer" established by the Secretary of Labor for the project before the beginning of construction. Only the boilerplate of a mimeographed form transmittal letter, "This Administration has been in charge of the examination of payroll records for this project and has determined that the check in the amount stated is proper compensation for your work.", stands in the way of a clearcut, unassailable judicial adjudication. But state trial courts, in the exercise of their important federal question jurisdiction, are frequently diffident at seeming to interfere, conflict or meddle with federal administrative agencies, denying to themselves the powers of federal district courts even where the jurisdiction, and the consequent judicial duty, may be to exercise a concurrent or *de novo* jurisdiction; and the failure to do so, a judicial error.

Thus the trial court, sitting as Special Term, avoided coming to grips with the FHA's form letters by finding that National Housing's prevailing wage section did not provide a private judicial remedy until a 1964 amendment[2] which came "too late" to apply to these respondents (Pet. 5a-8a).

The issue of whether there was a binding administrative adjudication likewise escaped official attention in the intermediate appeals court, the Appellate Division of the State Supreme Court, which contented itself with a reversal based on the finding that the prevailing wage section of National Housing, like the Eight Hour Law as treated by

2. Public Law 88-349 enacted July 2, 1964; 78 Stat. 238. Reading National Housing's section 212(a) as it stood at enactment in 1939 and as it stands today, shows it to be as barren of mention of a remedy, administrative or judicial, today as it was at enactment.

Filardo v. Foley Bros., supra, implied the grant of a private judicial remedy.

Only in the New York Court of Appeals did the Court come to grips with the issue of whether there had been an exercise of a lawfully binding administrative determination, as well as actionability under the National Housing Act[3]. In our view the *per curiam* opinion of the majority is precisely correct in discerning a wholly discretionary power, not exercised here, in the Secretary of Labor (*not* in the FHA Commissioner) to make binding administrative determinations after adversary hearings and with an appropriate line of review (29 CFR, subtit. A, §5.10; Pet. 26a); and because that discretion had not been exercised, there had been no exercise of an exclusive administrative remedy such as would bar these aggrieved respondents from freely pursuing the remedy whose grant was implied by the statute.

Still the language of the *per curiam* opinion is cryptic. Worse, it makes no real effort to explain its application or to rebut Judge Jasen's awesome looking dissent: a dissent which accepts a fictitious and non-existent "order" of the Federal Housing Commissioner for the purpose of defeating the true administrative determination of the Secretary of Labor fixing the prevailing wage of respondents at $3.95 per hour and overtime premium under a statute giving these respondents the right to effect collection in suit. Why the bland language of a form letter covering a legally voluntary restitution payment by employer to employee—about as legally potent a document as

3. A third issue regarding the validity of the nine additional checks of August 24, 1964 as releases by endorsement even though drawn in amounts less than the unpaid balance of prevailing wage was only mentioned in passing in Judge Jasen's dissent (Pet. 15a). See *Schulte Co. v. Gangi,* 328 U.S. 108 (1948).

a laundry ticket—should draw such awed attention from the State judiciary is a testimony to a diffidence that is widespread and could benefit from the instruction of this Court.

REASONS FOR GRANTING THE WRIT

1. In 1949 when this Court, 336 U.S. 281, reversed *Filardo v. Foley Bros.*, 297 N.Y. 217 (1948), for the attempt of the New York State Court of Appeals to give extraterritorial application to the Eight Hour Law (as amended September 9, 1940, c. 717, Title III, §303; 54 Stat. 884, Tit. III, sec. 303; 40 U.S.C. §325a), it expressly left open the question of whether that statute, silent as to remedy, nevertheless by direct implication or via the third party beneficiary route, afforded an employee a suit against his employer for the recovery of his mandated wages. No ruling on this question has ever been made by this Court and, until the New York courts again applied *Filardo* in the instant case dealing with the highly analogous situation of National Housing's prevailing wage section, neither had that section, enacted in 1939, ever been authoritatively interpreted with regard to judicial enforcement. Thirty-seven years is, of course, maturity enough for an important item of legislation which, as petitioner has pointed out, can hardly be said to stand in isolation, to receive an authoritative interpretation from this Court.

Interestingly enough, the Eight Hour Law, the subject of *Filardo's* attention, was repealed in August 1962. Its successor, the Contract Work Hours Standards Act, enacted August 13, 1962, 76 Stat. 357-360; 40 U.S.C. §327-332, set forth in the appendix to this Brief, in repealing the Eight Hour Law, not only incorporated *Filardo's* holding with respect to private judicial suit (Sec. 102(b)(1) and (2), but extended coverage to include both

the public construction projects hitherto covered by the Eight Hour Law, and other projects given Government aid in the form of loans, grants, insurance or loan guarantees under statutes providing wage standards for such work, Sec. 103(a)(3).

Since the Contract Work Hours Standards Act of 1962, enacted before the hire of any of the respondents, therefore covers at least the overtime features of FHA's prevailing wage projects, not to give the base pay portion of a prevailing wage claim the same right to a judicial remedy as the overtime portion of the same claim would indeed be anomalous. We think that, in allowing suit for recovery of unpaid wages in overtime violations, the Contract Work Hours Standards Act assumes, correctly, that the underlying basic prevailing wage statute is in concordance as to remedy.

2. Petitioner lays great stress on what it regards as the binding administrative determination of the FHA's form transmittal letter and so, of course, did the dissenting opinions of Breitel, Ch. J., and Jasen, J. Judge Jasen's opinion explicitly views the majority action of his Court as an unwarranted State interference with federal administrative action reviewable, if at all, by exclusively federal authority Needless to say, our disagreement is complete.

We feel that this case affords a much needed vehicle to assure state courts, in the exercise of their federal question jurisdiction, that their duty, in proper case, is to adjudicate federal law; that if the jurisdiction conferred on a federal district court is to adjudicate the facts of a case *de novo* without the estoppel or bar of the mimeographed form transmittal letter of a federal administrative agency, the same jurisdiction properly fastened on a state court of

original jurisdiction makes its duties and powers no less than that of its federal court counterpart.

This case is purely federal in its substance. But strong authority indicates that with no single wage claim reaching the $10,000.00 jurisdictional minimum, and with aggregation of claims for jurisdictional purposes unavailable, the resort to the state courts was a matter of necessity.

Willis v. E.I. duPont de Nemours & Co., 171 F.2d 51 (10 Cir. 1948)

Chambers v. Florence Construction Co., 79 F. Supp. 845 (D.C. Ga. 1948)

Whether the state courts have a federal case because the district courts have no jurisdiction or because a defendant makes no timely application to remove hardly matters; the state court is burdened with a duty, ultimately answerable here, to make proper adjudication of the case and not to shrug off an evaluation of the legal significance of administrative action where the strong policy of a remedial statute demands that the judiciary evaluate the facts.

The majority opinion of the Court of Appeals of the State of New York correctly directs that the trial court proceed with the action and refuses to treat the transmittal letter as a bar; but the cryptic quality of the opinion deprives the parties and the public of the greater detail needed commensurate with the importance of its decision.

We feel that the form letter of the FHA is not the stuff upon which Mayfair's defense of collateral estoppel — asserted years after its answer had been filed — can be supported. Other federal statutes mince no words about covered laborers' rights to institute lawsuits for the shortfalls of administrative collection and the Contract Work Hours Standards Act's section 104(b), applying at

the very least to FHA project overtime claims, directly copies that provision from the Davis-Bacon Act of 1931, as amended; 46 Stat. 1494, as amended; 40 U.S.C. §§276a-1 — 276a-7. Even more important is the explicit provision of Sec. 102(b)(2) of the Contract Work Hours Standards Act that makes the administrative remedies available "in addition" to a primary remedy where the employer is made "liable to such affected employee for his unpaid wages".

CONCLUSION

Touching base in so many vitally important areas of prevailing wage legislation not hitherto authoritatively dealt with by this Court, this case presents a truly worthwhile opportunity for significant and important review by this Court. We join with petitioner in respectfully urging a grant of the writ.

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Dated: New York, N.Y.
June 17, 1976

SAMUEL PANZER,
On the Brief.

Appendix

Eight Hour Law, 40 Hour Overtime Provision C.717, Tit. III, Sec. 303; 54 Stat. 884; 40 U.S.C. §325a, Approved September 9, 1940

SEC. 303. Notwithstanding any other provision of law, the wages of every laborer and mechanic employed by any contractor or subcontractor engaged in the performance of any contract of the character specified in the Act of June 19, 1912 (37 Stat. 138; U.S.C., title 40, secs. 324, 325), shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

Contract Work Hours Standards Act of August 13, 1962, Public Law 87-581, Secs. 101-106; 76 Stat. 357; 40 U.S.C. §§327-332.

AN ACT

To establish standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Work Hours Act of 1962" and title I may be cited as the "Contract Work Hours Standards Act".

Sec. 2. As used in this Act, the term "this Act" means the Work Hours Act of 1962 except in title I, where it means the Contract Work Hours Standards Act.

TITLE I—CONTRACT WORK HOURS STANDARDS ACT

"Secretary"

Sec. 101. As used herein, the term "Secretary" means the Secretary of Labor, United States Department of Labor.

Forty-hour week provision

Sec. 102. (a) Notwithstading any other provision of law, the wages of every laborer and mechanic employed by any contractor or subcontractor in his performance of work on

any contract of the character specified in section 103 shall be computed on the basis of a standard workday of eight hours and a standard workweek of forty hours, and work in excess of such standard workday or workweek shall be permitted subject to the provisions of this section. For each workweek in which any such laborer or mechanic is so employed, such wages shall include compensation, at a rate not less than one and one-half times the basic rate of pay, for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in the workweek, as the case may be.

(b) The following provisions shall be a condition of every contract of the character specified in section 103 and of any obligation of the United States, any territory, or the District of Columbia in connection therewith;

(1) No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic, in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek except in accordance with the provisions of this Act; and

Liability of employers for violation.

76 STAT. 357. 76 STAT. 358.

(2) In the event of violation of the provisions of paragraph (1), the contractor and any subcontractor responsible therefor shall be liable to such affected employee for his unpaid wages and shall, in addition, be liable to the United States (or, in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages as provided therein. Such liquidated damages shall be

computed with respect to each individual employed as a laborer or mechanic in violation of any provision of this Act, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by this Act. The governmental agency for which the contract work is done or by which financial assistance for the work is provided may withhold, or cause to be withheld, subject to the provisions of section 104, from any moneys payable on account of work performed by a contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as herein provided.

Contracts, applicability.

Sec. 103. (a) The provisions of this Act shall apply, except as otherwise provided, to any contract which may require or involve the employment of laborers or mechanics upon a public work of the United States, of any territory, or of the District of Columbia, and to any other contract which may require or involve the employment of laborers or mechanics if such contract is one (1) to which the United States or any agency or instrumentality thereof, any territory, or the District of Columbia is a party, or (2) which is made for or on behalf of the United States, any agency or instrumentality thereof, any territory, or the District of Columbia, or (3) which is a contract for work financed in whole or in part by loans or grants from, or loans insured or guaranteed by, the United States or any agency or instrumentality thereof under any statute of the United States providing wage standards for such work: *Provided*, That the provisions of section 102, shall not

apply to work where the assistance from the United States or any agency or instrumentality as set forth above is only in that nature of a loan guarantee, or insurance. Except as otherwise expressly provided, the provisions of the Act shall apply to all laborers and mechanics, including watchmen and guards, employed by any contractor or subcontractor in the performance of any part of the work contemplated by any such contract, and for purposes of this Act, laborers and mechanics shall include workmen performing services in connection with dredging or rock excavation in any river or harbor of the United States or of any territory or of the District of Columbia, but shall not include any employee employed as a seaman.

(b) This Act shall not apply to contracts for transportation by land, air, or water, or for the transmission of intelligence, or for the purchase of supplies or materials or articles ordinarily available in the open market. This Act shall not apply with respect to any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C. 35-45).

Coordination of enforcement by Federal agencies.

76 STAT. 358. 76 STAT. 359.

Sec. 104 (a) Any officer or person designated as inspector of the work to be performed under any contract of the character specified in section 103, or to aid in the enforcement or fulfillment thereof shall, upon observation or investigation, forthwith report to the proper officer of the United States, of any territory or possession, or of the District of Columbia, all violations of the provisions of this Act occurring in the performance of such work, together with the name of each laborer or mechanic who was required or permitted to work in violation of such provisions and the day or days of such violation. The

amount of unpaid wages and liquidated damages owing under the provisions of this Act shall be administratively determined and the officer or person whose duty it is to approve the payment of moneys by the United States, the territory, or the District of Columbia in connection with the performance of the contract work shall direct the amount of such liquidated damages to be withheld for the use and benefit of the United States, said territory, or said District, and shall direct the amount of such unpaid wages to be withheld for the use and benefit of the laborers and mechanics who were not compensated as required under the provisions of this Act. The Comptroller General of the United States is hereby authorized and directed to pay directly to such laborers and mechanics, from the sums withheld on account of underpayments of wages, the respective amounts administratively determined to be due, if the funds withheld are adequate, and, if not, an equitable proportion of such amounts.

(b) If the accrued payments withheld under the terms of the contracts, as aforesaid, are insufficient to reimburse all the laborers and mechanics with respect to whom there has been a failure to pay the wages required pursuant to this Act, such laborers and mechanics shall, in the case of a departi. :nt or agency of the Federal Government, have the rights of action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

Right to appeal.
72 Stat. 967.

(c) Any contractor or subcontractor aggrieved by the withholding of a sum as liquidated damages as provided in this Act shall have the right, within sixty days thereafter, to appeal to the head of the agency of the United States or of the territory for which the contract work is done or by which financial assistance for the work is provided, or to the Commissioners of the District of Columbia in the case of liquidated damages withheld for the use and benefit of said District. Such agency head or Commissioners, as the case may be, shall have authority to review the administrative determination of liquidated damages and to issue a final order affirming such determination; or, if it is found that the sum determined is incorrect or that the contractor or subcontractor violated the provisions of this Act inadvertently notwithstanding the exercise of due care on his part and that of his agents, recommendations may be made to the Secretary that an appropriate adjustment in liquidated damages be made, or that the contractor or subcontractor be relieved of liability for such liquidated damages. The Secretary shall review all pertinent facts in the matter and may conduct such investigations as he deems necessary, so as to affirm or reject the recommendation. The decision of the Secretary shall be final. In all such cases in which a contractor or subcontractor may, within sixty days after such final order, file a claim in the Court of Claims: *Provided, however,* That final orders of the agency head, the Commissioners of the District of Columbia or the Secretary, as the case may be, shall be conclusive with respect to findings of fact if such findings are supported by substantial evidence.

(d) Reorganization Plan Numbered 14 of 1950 (15 F.R. 3175; 64 Stat. 1267) shall be applicable with respect to the

provisions of this Act, and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, 54 Stat. 1236, 63 Stat. 108; 40 U.S.C.276c), shall be applicable with respect to those contractors and subcontractors referred to therein who are engaged in the performance of contracts subject to the provisions of this Act.

Limitations, exemptions.

Sec. 105. The Secretary may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business.

Violations.

76 STAT. 359. 76 STAT. 360.

Sec. 106. Any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer or mechanic employed in the performance of any work contemplated by any contract to which this Act applies, who shall intentionally violate any provision of this Act, shall be deemed guilty of a misdemeanor, and for each and every such offense shall, upon conviction, be punished by a fine of not to exceed $1,000 or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof.

TITLE II—MISCELLANEOUS AND EFFECTIVE DATE

5 USC 673c.

Sec. 201. The proviso of section 23 of the Act of March 28, 1934 (48 Stat. 509, 522), as amended, is hereby amended to read as follows: "*provided,* That the regular hours of labor are hereby established at not more than eight per day or forty per week, but work in excess of such hours shall be permittrd when administratively determined to be in the public interest: *Provided further,* That overtime work in excess of eight hours per day or in excess of forty hours per week shall be compensated for at not less than time and one-half of the basic rate of compensation, except that employees subject to this section who are regularly required to remain at or within the confines of their post of duty in excess of eight hours per day in a standby or on-call status shall be paid overtime rates only for hours of duty, exclusive of eating and sleeping time, in excess of forty per week."

62 STAT. 942.

Sec. 202. (a) Section 1499 of title 28, United States Code, is hereby amended to read as follows:

"1Liquidated damages withheld from contractors. under Contract Work Hours Standards Act

Ante, p. 358.

"The Court of Claims shall have jurisdiction to render judgment upon any claim for liquidated damages withheld from a contractor or subcontractor under section 104 of the Contract Work Hours Standards Act."

37 STAT. 137. 62 STAT. 989.

(b) The Court of Claims shall continue to have jurisdiction to render judgment upon any claim for a

penalty withheld from a contractor or subcontractor under section 324 of title 40, United States Code, in connection with any contract subject to said section existing on the ffective date of this Act, or thereafter entered into pursuant to invitations for bids that are outstanding at the time of the enactment of this Act.

Repeals.

Sec. 203. The following statutes are hereby repealed: Sections 1 and 2 of the Act of August 1, 1892 (27 Stat. 340; 40 U.S.C. 321, 322), as amended by the Act of March 3, 1913 (37 Stat. 726); sections 892 and 893 of the Act of March 3, 1901 (31 Stat. 1334; D.C. Code, 1961 edition, secs. 22-3407, 3408); the Act of June 19, 1912 (37 Stat. 137; 40 U.S.C. 324, 325), as amended by the Act of June 25, 1948 (62 Stat. 989); that portion of the Naval Service Appropriation Act, 1918 (Act of March 4, 1917, 39 Stat. 1192), which is codified as section 326 of title 40 of the United States Code (1952 edition); and section 303 of the Second Supplemental Defense Appropriations Act, 1941 (54 Stat. 884; 40 U.S.C.325a). The provisions of such statutes shall, notwithstanding, continue to apply with respect to contracts existing on the effective date of this Act or en.:red into pursuant to invitations for bids that are outstanding at the time of the enactment of this Act.

Effective date.

Sec. 204. This Act shall take effect sixty days after its enactment, but shall not affect any contract then existing or any contract that may thereafter be entered into pursuant to invitations for bids that are outstanding at the time of the enactment of this Act.

Approved August 13, 1962, 11:46 a.m.